

Supreme Court upholds \$57.1M in back pay for homecare workers

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Olympian

April 3, 2014 Updated 19 hours ago



Justice Susan Owens

WASHINGTON STATE SUPREME COURT

A divided Washington state Supreme Court [ruled Thursday that Washington owes about \\$57 million in back pay to homecare workers who saw their hours cut due to budget concerns](#) during 2003-07.

The [court heard arguments in the case last May](#) and came down by a 5-to-4 margin in favor of the workers. Opinions are [here](#)

The court rejected an additional \$38 million award for prejudgment interest in the case on grounds that it could not be accurately calculated. But interest on the judgment over the past two years will bring the state's total liability to about \$80 million [number has been updated] for decisions made under former Govs. **Gary Locke** and **Chris Gregoire**.

The 22,000 workers in the suit live in the home with disabled clients that they care for. They saw their work hours cut by an average of 15 percent during 2003-07 under a "shared living" rule adopted by the state Department of Social and Health Services for Medicaid clients. The reductions began as the state was trying to stretch scarce resources during a recession and the rule was jettisoned after the Supreme Court invalidated it.

"The key thing here is the low income workers that the state shortchanged are the winners here," said **John White Jr.**, who argued the appeal at the high court on behalf of workers. "The state Supreme Court's decision makes clear that when the state enters into a contract is obligated to carry it out in good faith. DSHS here did not do that."

Clients in the Medicaid program are low income and receive the federal-state help with care – including washing, laundry, cooking, shopping and help with medicines. The in-home help lets the clients remain in their own homes and saves the public money, but the caregivers contend they ended up working unpaid hours – and the state refused to pay up, even after the Supreme Court threw out the rule in 2007.

Justice **Susan Owens** wrote the majority opinion signed by Justices **Charles Wiggins**, **Steven Gonzalez** and **Sheryl Gordon McCloud** that rejected DSHS's argument that there was no specific contract violation to justify the claims. Justice **Charles Johnson** wrote a partial concurrence and partial dissent which said the court also should have awarded \$38 million in prejudgment interest.

Owens wrote in part:

DSHS confuses what is violated with how it is violated. While DSHS is correct that a breach of a duty imposed by statute does not create an action on contract ... the duty that providers seek to enforce here is a contractual duty around a contractual term. The contractual term is the determination of the hours of care for which each client is eligible, and DSHS had discretion in its performance of that term because it created the CARE process that made that determination. Therefore, DSHS had an implied duty of good faith and fair dealing in its performance of that term. Here, the jury found that DSHS violated that contractual duty when it decided to automatically reduce the payments for in-home care providers. Furthermore, excusing breaches of the duty of good faith when those breaches are also statutory violations would neither protect the reasonable expectations of contracting parties nor encourage parties to obey the law. Justice **Debra Stephens** authored the main dissenting opinion and was joined by Chief Justice **Barbara Madsen** and Justices **Mary Fairhurst** and **James Johnson**.

In it, Stephens wrote that Owens' opinion:

"embraces the providers' misguided argument that the Department of Social and Health Services' (DSHS) statutory obligations in developing client service plans translate into contractual discretion to determine a future contract term. As a result it authorizes the use of a private contract action to impose on the State what amounts to strict liability for misinterpreting federal Medicaid comparability law."

The ruling has implications for state budget writers, but the Office of Financial Management and state lawyers did not have an immediate comment. However, in a briefing last year before the court heard arguments, the Attorney General's Office said:

The taxpayer dollars available to public assistance programs are limited. In this case, people received the care provided for under Medicaid, and their caregivers were paid for the number of service hours awarded. The effect of the trial court judgment is to allow benefit awards that have been final and closed to be reopened years later and to give care providers contract rights to challenge benefit decisions DSHS makes for Medicaid recipients. The judgment in this case is unprecedented and undermines the fiscal planning needed for all DSHS programs. This is detrimental to the people who rely on funding for DSHS services, the taxpayers, and the continued viability of public assistance programs. Consequently, an appeal of this trial court judgment of almost 100 million dollars is appropriate and necessary.

The workers' legal claims are based on the department's application of a 2003 rule, which the high court later invalidated on grounds that reducing hours of paid care was inconsistent with Medicaid regulations. The agency later provided greater assistance after doing specific assessments of clients' needs and the help available to them from family and others.

It is not clear how soon workers would be paid or how much. But White said interest is accruing at a rate of \$570,000 per month. That brings the total due to roughly \$80 million, which would mean an average award in the neighborhood of \$3,470 per claimant, according to White. But amounts vary based on how much work an individual provider did without being paid, White cautioned.

Of the total award, about \$15 million was allowed by a Thurston County judge for attorney fees, White said. Tacoma trial lawyer **Darrell Cochran** [represented the workers at trial](#).

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